IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 535 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NARENDRAKUMAR KESHAVLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 535 of 2001

MR NITIN M AMIN for Petitioner No. 1

Mr. H.L. Jani, APP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/07/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by learned APP Mr. H.L. Jani on behalf of the respondents.

Heard learned advocate Mr. Nitin Amin for the

petitioner and Mr. H.L. Jani, learned APP for the respondents. By this petition, the petitioner has prayed for directing the learned JMFC, Kalol not to change his order dated 22.6.2001 passed while committing the case to the court of sessions, Mehsana and further to treat the petitioner on regular bail till the final disposal of the sessions case against the petitioner. The facts giving rise to the present petition, in short, are as under:

The petitioner is the practising doctor in Gandhinagar. In the year 1991, an FIR being CR NO. 128 of 1991 was filed before the Kalol Taluka Police Station for the offences under section 366, 304A,314, 201, 176 and 114 of the IP Code wherein the petitioner is cited as one of the accused persons. Apprehending his arrest in connection with the said FIR, the petitioner filed criminal misc. application no. 1584 of 1991 for anticipatory bail wherein interim bail was granted by this Court on 16.5.1991 and subsequently, interim order passed by this court was confirmed on the same terms and conditions by final order dated 10.6.1991. Thereafter, the petitioner appeared before the police thrice and he was arrested and was released on anticipatory bail.

Thereafter, on 22.6.2001, the learned Magistrate committed criminal case no. 581 of 1992 to the court of sessions, Mehsana as the offences are triable by the court of sessions. While committing the case to the court of sessions, the learned Magistrate also accepted and released the petitioner on bail of Rs.5000.00 and further ordered that on or before 27.7.2001, all the concerned accused including the petitioner shall obtain bail from the court of sessions at Mehsana. Thereafter, the learned Magistrate at Kalol called the advocate for the petitioner and raised a quarry to the effect that since the regular bail has not been obtained after the order of the anticipatory bail, therefore, the bail granted to the petitioner by the learned JMFC on 22.6.2001 while committing the case to the court of sessions is required to be cancelled and warrant is required to be issued. The petitioner submits that while anticipatory bail to the petitioner was granted, neither in the interim nor in the final order of anticipatory bail, it has been mentioned that the regular bail shall be obtained by the petitioner. Thus, according to the petitioner, the order granting anticipatory bail to the petitioner by this court is that of permanent bail since the same condition of marking presence on every Wednesday at the concerned police station has been imposed and the petitioner has been complying with the said condition of bail till this date. The petitioner was arrested as per

the order of this court and was released on bail in the year 1991 and thereafter, the order of anticipatory bail was confirmed by this court on the same terms and conditions. In view of this, according to the petitioner, no fresh regular bail is required to be obtained. Even otherwise, the learned JMFC concerned has also granted bail to the petitioner for a sum of Rs.5,000.00 on 22.6.2001. In view of the above, the petitioner has approached this court for the reliefs as aforesaid. In view of these facts, now, according to the learned Magistrate concerned, the petitioner is required to obtain fresh regular bail before the sessions judge concerned. According to my view, considering this aspect, when the anticipatory bail has been granted by this court subject to condition by way of interim order and thereafter on 22.6.2001, the learned Magistrate has also granted regular bail in favour of the petitioner, therefore, now, there is no necessity for the petitioner to obtain regular bail in view of the order dated 22.6.2001 passed by the learned Magistrate and, therefore, the bail which was granted by the learned Magistrate on 22nd June, 2001 is required to be treated as regular bail granted in favour of the petitioner, in the facts and circumstances of the case. With these directions and observations, this petition is disposed of. Rule is made absolute in terms indicated hereinabove.

Direct Service is Permitted.

16.7.2001. (H.K. Rathod,J.)

Vyas